

REMARKS

Claims 1 and 2 stand rejected under 35 USC 103(a) over Young in view of Nicosia. This rejection is respectfully traversed.

First, in making this rejection, the Examiner has combined the latching assembly of Nicosia's motorcycle sissy bar with Young's pin holder of a medical device for spinal surgery, alleging "Young and Nicosia et al. are analogous art because they are concerned with a similar technical difficulty, namely a means of fastening." Young and Nicosia do not belong to analogous arts, no matter what type of technical difficulties they are concerned with. A sissy bar for a motorcycle and a medical device belong to the art of motorcycles and the art of medical devices—two different technical arts. Persons of ordinary skill in the art of this invention would have had no reason whatever to consider motorcycle design to be relevant.

In addition, the Examiner's argument that Young and Nicosia can be combined because they concern similar technical difficulties is without legal basis. The *KSR Guideline*, released October 10, 2007, states:

[A] person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. Factors that may be considered in determining the level of ordinary skill in the art may include: (1) "Type of problems encountered in the art;" (2) "prior art solutions to those problems;" (3) "rapidity with which innovations are made;" (4) "sophistication of the technology;" and (5) "educational level of active workers in the field." (Federal Register, p. 57528)

Applicant notes that the "Type of problems encountered in the art" refers to difficulties known in the relevant art—the art of medical devices—or difficulties disclosed in the cited relevant reference—Young. Young fails to disclose or suggest a reason for combining the latching assembly of a motorcycle with its medical device. The same is true when starting from Nicosia. Thus, the Examiner has failed to carry his burden under the *KSR* standard that "there must be some articulated reasoning with some rational underpinning to support the legal

conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ.2d 1385, 1396 (2007). At the time of the invention, a person of ordinary skill in the art would not have had a reason to combine the latching assembly of a motorcycle of Nicosia with the medical device of Young. Accordingly, the Examiner’s rationale for combining these references lies in forbidden hindsight, and this rejection should be withdrawn.

Second, even if we were to assume that Young and Nicosia are combinable, the combination does not result in the claimed invention. Claim 1 recites a bone spreader having “at least one pin holder (7) having a locking device *for a pin* (13) *located therein* thereon, wherein the pins (13) have at least one transverse groove (14) formed therein and the locking device comprises a locking finger (12) which is guided between a locking position and a release position in a transverse movement tangentially with respect to the pin holder (7).” In other words, the pin holder (7) already restricts the lateral movement of the pin (13), and the locking finger (12) engages the transverse groove (14) on the pin (13) to restrict the movement of the pin (13) along the pin axis (indicated with an arrow). Fig. 2 is reproduced below.

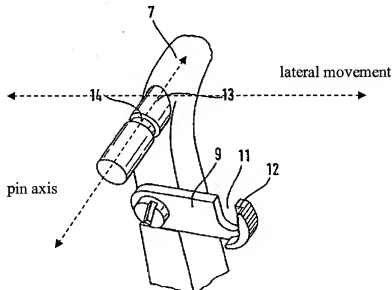
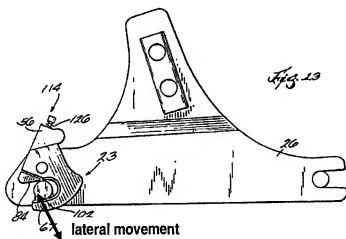


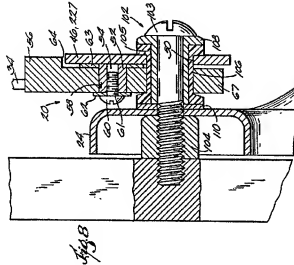
Fig. 2

Nicosia does not disclose or suggest a locking device configured to restrict the movement of the pin (13) along the pin axis by engaging a transverse groove (14) on the pin (13) as claimed. First, it does not disclose a transverse groove (14). Second, it does not disclose a tubular pin holder that restricts the lateral movement of the pin (102). Instead, the latching member (56) of Nicosia is configured to restrict the lateral movement (indicated with an arrow in Fig. 13 reproduced below) of the pin (102), not the movement of the pin along the pin axis as claimed. The locking finger (67) of Nicosia simply secures the pin inside the U-shaped recess (50). Since Young does not disclose a locking finger at all, Young does not disclose or suggest the claimed locking device wherein the pin holder restricts the lateral movement of the pin while the locking finger restricts the movement of the pin along the pin axis as claimed. Accordingly, none of the cited references discloses or suggests a locking device combined with a tubular pin holder that restricts the movement of the pin along the pin axis as claimed. Combining Young and Nicosia does not result in the claimed invention, and this provides a second reason to withdraw this rejection.



Third, as shown in Fig. 8 of Nicosia reproduced below, the pin (102) of Nicosia does not have a transverse groove that may engage a locking finger detachably but securely to fix the movement of the pin along the pin axis as claimed. The pin (102) of Nicosia only has a stud (103) for nailing down the pin (102) to the motor bicycle frame (24). Since Young also fails to

disclose a pin with a transverse groove that may engage a locking finger (67) as claimed, none of the cited references discloses or suggests this feature. This provides a third reason to withdraw this rejection.



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Respectfully submitted,

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